))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2173 of 2000
with
Civil Applciation No. 12139 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GSRTC

Versus

MASURBHAI DHANJIBHAI HARIJAN

Appearance:

1. First Appeal No. 2173 of 2000
MR MITUL K SHELAT for Petitioner No. 1
MR DN PANDYA for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 22/01/2002

ORAL JUDGEMENT

1. By means of filing this appeal under section 173 of the Motor Vehicles Act, 1988 ('the Act' for short), appellant, Gujarat State Road Transport Corporation, seeks to challenge the order dated March 30, 2000 passed below application Ex.6 in MACP No. 799 of 1997 by the MAC Tribunal, Vadodara by which the appellant is directed to pay Rs.25,000/- with 12% interest from the date of application till its realization jointly and severally with respondent No.2 by way of compensation under the No fault Liability Principle envisaged under Section 140 of the Act.

2. I have considered the submissions advanced by Mr. Shelat, learned advocate for the appellant. I have also perused the averments made in the appeal and the grounds set out therein so also the impugned judgment and award. Obviously, this order is in the nature of an interim order which is subject to adjustment against the final order that will be passed in the main MACP No.799 of 1997 which is pending before the Tribunal. This principle is established by the Supreme Court in the case of the Oriental Insurance Company Limited v. Hansrajbhai V. Kodala, 2001 (4) JT 477.

3. In view of the aforesaid state of affairs, I see no justifiable ground or valid reason to interfere with the impugned award at this stage. However, with a view to safeguard the interest of the appellant insurance company, an undertaking of the original claimant is required to be obtained so that the original claimant shall not abandon the main claim petition and withdraw the amount unconditionally with a view to fritter away the amount of compensation of Rs.25,000/- and interest thereon which is awarded in his favour.

4. In this view of the matter, it is directed that the original claimant shall file a solemn undertaking before the Tribunal within a period of four weeks of the service of this order to the effect that the main claim petition shall not be abandoned, shall not be withdrawn and shall not be permitted to be dismissed for default or for any other cause and that the claimant shall obtain a decision on merit in the said claim petition. The amount awarded under the impugned award shall be adjusted against the final award in the main claim petition. On the undertaking being filed by the claimant as aforesaid, the amount under the impugned award may be permitted to be withdrawn by the original claimant on furnishing security to the satisfaction of the Tribunal.

5. Subject to the aforesaid observations and

directions, the appeal is dismissed with no order as to costs.

6. The amount deposited before the Registry, if any, shall be transmitted to the Tribunal forthwith. D.S. is permitted.

7. As the appeal is dismissed, the Civil Application for for vacating the interim relief does not survive and hence it is rejected.

(A.M. Kapadia, J.)